



June 22, 1999

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR99-1714

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125159.

The City of Fort Worth (the "city") received a request for information concerning certain individuals and locations. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information at issue.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a). Section 552.103(b) provides that "[f]or purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court."

You inform us that the requested information relates to a double homicide case currently pending in Tarrant County. You have submitted an affidavit from an Assistant Criminal District Attorney in the Tarrant County District Attorney's Office. The Assistant Criminal District Attorney states that the requested information relates to the pending double homicide case and requests that the Fort Worth Police Department withhold the requested information

until the criminal case has been finally adjudicated. We agree that the submitted information relates to the pending criminal prosecution. Therefore, we find that the city may withhold the information from disclosure under section 552.103(a) on behalf of the Tarrant County District Attorney.

In reaching this conclusion however, we assume that neither the defendant nor his attorney has previously had access to the information at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).¹ In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125159

Encl. Submitted documents

cc: Mr. Phil Guiles
Detective
400 W. Weatherford Street
Fort Worth, Texas 76102
(w/o enclosures)

¹We note that section 552.103(a) cannot be invoked to withhold from disclosure front page offense report information, as this information should have already been provided to the defendant by a magistrate or in an indictment. Open Records Decision No. 597 (1991).